IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

Bail Appl..No. 6642 of 2007()

OS.28/2006 of MUNI-MAGI.COURT,THODUPUZHA
CRIME NO.402/07 OF KANJAR POLICE STATION

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PETITIONER : ACCUSED

HARIHARAN, AGED 39 YEARS,
S/O.MADHAVAN PILLAI, VALLIPANACHALIL,
KUDAYATHOOR VILLAGE, THODUPUZHA TALUK.

BY ADV. SRI.K.DIVAKARAN NAIR

RESPONDENTS:

THE SUB INSPECTOR OF POLICE,
KANJAR POLICE STATION, IDUKKI DISTRICT,
(CRIME NO.402/2007) REPRESENTED BY THE
DIRECTOR OF PROSECUTION, HIGH COURT,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6642 of 2007

Dated this the 5th day of November, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused. Altogether there are 5 accused persons. Accused 2 and 5 have already been arrested. Investigation is in progress. The petitioner apprehends that like the co-accused, he may also be arrested on the allegation that he has committed the offence punishable, inter alia, under Section 308 r/w 34 I.P.C.

2. Accused 1 to 5 were allegedly engaged in undertaking some construction in a property. The defacto complainant, an advocate, allegedly raised objections against the said construction. It is the case of the defacto complainant that enraged by the objection which he was raising, the accused persons in furtherance of their common intention allegedly threw the defacto complainant away from the premises and he fell about 3.5 metres down. According to him, fortunately his head did not hit the ground. Had his head hit the ground, he may have suffered grievous injury/death. This in short is the allegation raised.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He points out that under Annexure-

II in a suit filed by the 2nd respondent herein, the defacto complainant has been restrained from causing any obstruction to the construction. It is in the course of the said construction that this alleged incident took place. Because of the clout of the defacto complainant with the police unnecessary allegations are being raised against the petitioner. The petitioner may, in these circumstances, be granted anticipatory bail, it is prayed. To a pointed question by this Court, the learned Public Prosecutor concedes that the defacto complainant had gone to the property to raise objections against the construction which the accused persons were undertaking as permitted in Annexure-II judgment.

4. The learned Public Prosecutor does not oppose the application for anticipatory bail and I am satisfied, in the facts and circumstances of this case, that the petitioner can be granted anticipatory bail.

5. In the result, the Bail Application is, allowed. The following directions are issued under Section 438 Cr.P.C.

i) The petitioner shall appear before the learned Magistrate at 11 a.m on 12.11.2007. He shall be enlarged on regular bail on his executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m and 1 p.m on 13.11.2007 and thereafter as and when directed by the Investigating Officer in writing to do so;

iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if those directions were not issued at all;

iv) If the petitioner were arrested prior to his surrender on 12.11.07 as directed in clause (1) above, he shall be released from custody on his executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) without any sureties undertaking to appear before the learned Magistrate on 12.11.07.

(R.BASANT, JUDGE)

rtr/-